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No. 01-1712

In The
# Supreme Court of the United States

EVA CHARLENE SARDONELL and
DOUGLAS SARDONELL,

*Petitioners,*

v.

GARY NORIEGA, individually, and as a Council Member, City of Powder Springs; WAYNE WRIGHT, individually, and as City Manager, City of Powder Springs; RICHARD SAILORS, individually, and as mayor, City of Powder Springs; VINCE BLACKMON, individually, and as Code Compliance Officer, City of Powder Springs; and the CITY OF POWDER SPRINGS,

*Respondents.*

**On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit**

## REPLY BRIEF

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## REPLY BRIEF FOR THE PETITIONERS

The Petition for Certiorari (the "Petition" or "Pet.") is absolutely right that the Eleventh Circuit Court of Appeals' decision squarely conflicts with this Court's decision in *Sullivan v. Little Hunting Park*, 396 U.S. 229 (1969), and therefore should be summarily reversed.

*Sullivan* held that a white person who was punished by being "expelled from the [local recreational] corporation" of which he was a member, could sue therefore under 42 U.S.C. § 1982, where the reason for the expulsion was the white person's protest of the local recreational corporation's refusing to approve an assignment of the white person's membership share to the black person renting his house. *See Sullivan*, 396 U.S. at 235, 237.

The Petition showed that respondents – including the named officials of the City of Powder Springs, Georgia and through them the City proper – punished petitioners by means of an unfounded investigation, accusations and criminal charges that were later dropped by an independent prosecuting authority, all for petitioner Charlene Sardonell's renting her house to black persons. Pet. at 2-16. The Petition thoroughly documents this fundamental contention and the courts below erred in dismissing it at summary judgment on the basis that petitioners Douglas and Charlene Sardonell, as whites, cannot sue under § 1982 for discrimination visited upon them because Charlene rented to blacks. Pet. at 16-27.

Although the Brief in Opposition (the "BIO") claims otherwise (BIO at 10-12), even a cursory examination of the district court's opinion shows that the court erroneously rejected petitioners' claims under the federal civil rights statutes, including 42 U.S.C. § 1982, because petitioners, as whites, could not sue for discrimination against them for renting to blacks. *See* Pet. at 17-18. The district court plainly understood that what petitioners "are trying to claim is that defendants retaliated against them for renting to non-whites." Pet. App. 23 (district court's opinion). However, the district court believed that this

legal theory was not allowed by § 1982 or the other civil rights statutes listed below. In regard to § 1982, the court specifically held: "[P]laintiffs' situation would not appear to fit within the scope of a § 1982 claim. In a typical § 1982 claim, a plaintiff must show: (1) that he is a member of a racial minority. . . . " Pet. App. 31. As the Petition shows, moreover, the district court's failure to recognize petitioner's basic legal theory is a reason why the district court rejected petitioners' claims under 42 U.S.C. §§ 1981 and 1985 and the Fair Housing Act as well. *See* Pet. at 17-18 (quoting district court's opinion, Pet. App. 22-23, 30-31, 33-34). It is therefore entirely accurate for the Petition to describe the district court's reasoning in rejecting all of these claims as having been "unified" by a "single theme." Pet. 17.

This pervasive error of the district court was adopted by the Eleventh Circuit. Without any significant analysis of the record or petitioners' claims – including their § 1982 claim – the Eleventh Circuit lauded the district court's opinion as a "carefully drawn order of 37 pages," even though it was fundamentally flawed in this respect. Pet. App. 2. In an attempt to justify the Eleventh Circuit's order, the BIO points (at 13, 20) to the Eleventh Circuit's summary recounting of the district court's order, but the summary itself upholds the district court's misinterpretation of § 1982. Specifically, the Eleventh Circuit summarized the district court's opinion in these words: "The basis of the [district court's opinion] is that there was no connection between the alleged acts and *a violation* of the Fair Housing Act, or 42 U.S.C. §§ 1981, 1982, 1983 and 1985. We affirm." Pet. App. 3 (emphasis added). The district court, however, believed that the civil rights laws above are not *violated* when the purported victim is a white claiming discrimination against herself for her relations with blacks. *See* Pet. at 17-18 (quoting district court's opinion, Pet. App. 22-23, 30-32, 33-34). The Eleventh Circuit's broadbrush approval of the district court's opinion thus indicates that the district court's error was adopted by the Court of Appeals.

The BIO's legal argument against the Petition, moreover, is thoroughly wrong and transparently so. The BIO argues that petitioners' § 1982 claim should be rejected because, in conducting the discriminatory, unfounded investigation of the Sardonells and pressing the meritless criminal charges against Charlene in particular, "[r]espondents took no action that affected the rental house owned by [Charlene] (the 3890 house)," i.e., the house Charlene rented to African Americans triggering the discriminatory punishment by respondents. *See* BIO at 1. Respondents further elaborate their argument as follows: "No action taken by Respondents affected the 3890 house [i.e., Charlene's house], [Charlene's] ownership of the . . . house or her relation with her tenants." BIO at 8. Rather, "[a]ll actions taken by Respondents were in the enforcement of the City's Home Occupation Ordinance at the 3891 house [i.e., Douglas' house]." BIO at 9. The point that this argument makes has no bearing on the merits of petitioners' § 1982 claim.

This Court's cases cited by the BIO (at 12-14, 19) show that the essential fact in a § 1982 claim is that the plaintiff was discriminatorily punished for exercising one of her basic property rights, such as the right to sell or lease, *not* whether the *form* of the punishment was harm to the property itself, the plaintiff's ownership of the property, or the plaintiff's relation with a buyer or tenant.

The BIO concedes (at 14) that "[t]he nexus for standing under 42 U.S.C. § 1982 existed" under the facts in *Barrows v. Jackson*, 346 U.S. 249 (1953), although *Barrows* was brought under the Fourteenth Amendment. As the BIO itself explains, in *Barrows* "a white woman, was subject to an *$11,600 fine* for breaching a restrictive covenant forbidding the sale of realty to non-Caucasians . . . . [She] could thus suffer *financial injury*" for exercising her right to sell to non-Caucasians and, for this reason, she "was granted standing." BIO at 14. Thus, the BIO admits that a simple "pocketbook injury," *Barrows*, 346 U.S. at 256 – a form of punishment that does not affect the

real property, the white plaintiff's ownership of the real property, or the white plaintiff's relation with the buyer – suffices to base a cause of action on § 1982. *See also* Pet. at 23 (discussing hypothetical example of tax on rentals of property to black citizens).

Next, in *Sullivan* the white plaintiff rented his house to a black citizen and assigned to him a membership share in a local recreational corporation. *Sullivan*, 396 U.S. at 234-35. The recreational corporation refused to approve the assignment and instead tendered the white plaintiff cash for his membership shares. *Id.* at 235. The white plaintiff protested and was "expelled from the [recreational] corporation." *Id.* This Court, citing *Barrows*, *supra*, held that expelling the white plaintiff from the recreational corporation gave him a cause of action under 42 U.S.C. § 1982 because this was a discriminatory punishment against the exercise of the property rights to rent and assign:

> We turn to Sullivan's expulsion for the advocacy of Freeman's cause. If *that sanction*, backed by a state court judgment, can be imposed, then Sullivan is *punished for trying to vindicate the rights of minorities protected by § 1982 . . . . Under the terms of our decision in* Barrows, *there can be no question but that Sullivan has standing to maintain this action.*

396 U.S. at 237 (emphasis added).

In *City of Memphis v. Greene*, 451 U.S. 100, 101 (1981), which is misquoted by the BIO at 19,[1] this Court held that a public street could be closed by the City of Memphis consistent with § 1982, where the closing would not "prevent blacks from exercising the same property rights as whites." 451 U.S. at 123. The rights secured by § 1982 always encompass the basic rights "to sell or rent,"

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[1] The quotation attributed by the BIO (at 19) to this Court's opinion in *City of Memphis*, 451 U.S. at 101, is actually drawn from the reporter's Syllabus, not this Court's opinion.

the Court explained, *id.* at 121; however, they do not encompass the right sought by the plaintiffs to use "one public street rather than another . . . for certain trips within the city." *Id.* at 124.[2]

Here, the record amply demonstrates that the governmental respondents discriminatorily punished petitioners for Charlene's exercising her right to rent her house to black persons. Pet. at 1-16. The punishment was far more severe than the $11,600 fine from *Barrows*,

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[2] Misplaced as well is the BIO's reliance (at 16-18) on *Inland Mediation Board v. City of Pomona*, 158 F.Supp. 2d 1120 (2001), and *Graves v. Van Buskirk*, 1991 WL 21545 (Oh. App. 9th Distr. Feb. 20, 1991). In *Inland Mediation*, the plaintiff claimed a violation of § 1982 because she had attended a public meeting where she heard a property owner state to the people present that he did not rent to blacks and he encouraged other property owners present not to rent to blacks. After hearing this, the plaintiff chose to move out of the town. The court reasoned that the plaintiff had not been denied her right to rent housing and further rejected her argument that "hurt feelings and annoyance as a result of racial prejudice in the neighborhood are, by themselves, actionable under § 1982." 158 F.Supp.2d at 1154 (discussing *Bradley v. Carydale Enterprises*, 730 F.Supp. 709, 717 (E.D.Va.1989)).

In *Graves v. Van Buskirk*, 1991 WL 21545 (Oh. App. 9th Distr. Feb. 20, 1991), a black property owner alleged a § 1982 violation based only on a neighbor's children's "vandalism and intimidation often exhibiting elements of racism." *Id.* at *4. The court rejected a § 1982 claim because it found "neither allegations nor evidence of a concerted effort by the Van Buskirk children to deprive blacks of leasehold interests because of race. [The plaintiff] conceded that none of the Van Buskirks had ever demanded that she and her family move from the neighborhood. The record demonstrates a case of senseless hooliganism." *Id.* What was missing in *Graves* is present here. The mother-in-law of City Councilman Gary Noriega – i.e., Ms. Murphy – has twice advocated to Charlene that she not rent to blacks and, when Charlene proceeded with her rental plans against Murphy's desires, Murphy told her neighbor Gordon Powell that she "would just have to see what 'Gary' can do about this." Affidavit of Gordon Powell at ¶ 10; Pet. at 5. And it has been at the instigation and continual prompting of respondent Gary Noriega, City Councilman, that respondents then actively punished the Sardonells for Charlene's renting her house to African Americans. *See* Pet. at 6-12; *see also* pp. 7-9, *infra*.

conceded by the BIO to be sufficient in a § 1982 case, *see* pp. 3-4, *supra*. Charlene was placed in jeopardy of multiple 1-year prison sentences (Pet. at 13-14), and Douglas' heating and air conditioning business was forced to move locations twice in a single year, finally exiting Powder Springs altogether, in order to escape respondents' ongoing harassment and hindering the business' growth (Pet. at 14-15; *see also* Affidavit of D. Sardonell ¶ 21 (sworn to Jan. 8, 2001); Affidavit of J. McTyre at ¶ 7 (sworn to Nov. 20, 2000)).

The BIO remarkably contends (at 2, 8) that the Petition "misrepresents the facts," but then fails to challenge the Petition's factual statements, much less to show that even one of them is misrepresented. It is particularly noteworthy that not a single one of the BIO's factual statements is a quote from the record, nor is any of them followed by a quote from the record supporting or evidencing the statement to be true (*see* BIO at 2-8), whereas the Petition's significant factual statements are all quotes of the record or are followed by quotes from the record showing or evidencing those statements to be true (Pet. at 2-16). The BIO did not show that any of the Petition's factual statements are misrepresentations because there is no basis on which it could have done so given the documentation provided by the Petition.

The factual statements in the Petition, moreover, amply permit a reasonable factfinder to conclude that respondents have punished petitioners because Charlene rented her house to black citizens. (Pet. at 1-16). This is particularly so when as here the case arises upon consideration of a motion for summary judgment against petitioners and they are legally entitled to have every reasonable inference from the record drawn in their favor. *See Celotex Corp. v. Catrett*, 477 U.S. 317 (1996).

The BIO (at 2-8) chose to argue against this fundamental contention simply by omitting altogether numerous essential facts. Of course, these are the central facts by which the discriminatory animus of the respondents is

vividly demonstrated. Namely, the BIO omits altogether to mention:

- the fact that the mother-in-law of respondent City Councilman Gary Noriega – i.e., Ms. Murphy – protested to Charlene on two occasions against Charlene's plan to rent her house to black citizens (*see* Pet. at 4-5 (quoting Charlene's Deposition at 47-51)) and, when Charlene refused to abide by Murphy's hateful desires, Murphy stated to her neighbor Gordon Powell that she "would just have to see what 'Gary' can do about this." Affidavit of Gordon Powell ("G. Powell Aff.") at ¶¶ 9-10 (sworn to Dec. 26, 2000), quoted by Pet. at 5.
- the fact that Murphy's son-in-law respondent Gary Noriega, City Councilman, complained against the Sardonells to respondent City Manager Wayne Wright, instigating the City's investigation of the Sardonells, and Gary Noriega fomented the investigation and criminal charges with numerous other complaints, as the Petition documents with admissions from the respondents' own depositions. (*See* Pet. at 7-8, 9-13). Nowhere does the BIO name anyone else but Gary Noriega as having filed a complaint against the Sardonells.
- the fact that, when the BIO states that Gary Noriega received "second and third hand complaints" against the Sardonells, the reference is to the purported "complaint" of Mary Sitherwood, related to Noriega's mother-in-law Ms. Murphy, related to Noriega's wife, related to Noriega. (BIO at 3 (citing Noriega Depo. at 37)). This is the supposed complaint, which is quoted in the Petition at 8, that the Petition showed lacks any credibility, most importantly because *both Mary Sitherwood and Ms. Murphy denied under oath that this "complaint" was ever made – a fact not disputed by the BIO.* (*See* Pet. at 8-9 (quoting Depositions of Ms. Murphy and Mary Sitherwood)).
- the fact that neighbors of the Sardonells aver that they observed no increase in business activity at Douglas' home, although respondents initiated their punishment of petitioners in the form of the unfounded investigation, on the alleged ground of ordinance violations

based on increased business activity at Douglas' home. (*See* G. Powell Aff. ¶ 4 ("In my observation, there was no difference in the business activities at Douglas Sardonell's home . . . between 1995 and 1999.") (sworn to Dec. 26, 2000); Affidavit of Sheila Powell ¶ 6 ("In my observations, there were no changes in the activities of the 3891 . . . home [Douglas' home] from the time that Douglas Sardonell began his heating and air conditioning business in 1995 through April of 1999."); *see also* Affidavit of John Long ¶ 4 ("During the period of 1998 and 1999, I did not observe any change in the activities transpiring at the home of Douglas Sardonell.") (sworn to Jan. 5, 2001)).

- the fact that neighbors of the Sardonells aver that the City's investigation of the Sardonells actually began shortly after Charlene rented her home to black citizens, which she did starting in June 1998 and anew in September of 1998 (Pet. at 5-7) (collecting record quotations and citations). Although the BIO alleges that respondent Noriega complained to respondent City Manager Wayne Wright in the end of 1997 or early 1998 to institute the investigation (BIO at 3), respondent City Manager Wright testified, to the contrary, that Noriega did not complain to start the investigation until "late 1998" (Wright indiv. Depo. at 22), a year later. On this motion for summary judgment against petitioners, however, the controlling evidence as to the date of the start of the investigation is the sworn observations of three of the Sardonell's neighbors, who all averred that the investigation in fact began shortly after Charlene Sardonell rented her home to an African American family, *see supra* this bullet point.
- the fact that respondent City Manager Wayne Wright admitted in his deposition that he has never before or since, except for petitioners, personally asked the Police Chief to issue a citation against anyone. (Pet. at 13 (quoting Wright indiv. Depo. at 112)). Here, the BIO states that Wayne Wright testified in his deposition

that he has asked the police chief to issue citations before (BIO at 6 (citing Wright indiv. Depo. at 109)), yet the BIO omits to acknowledge that Wright explained over the next three pages of his deposition that what he meant was that he had asked others on his staff to contact the police department to request a ticket to issue and he could not recall even once personally asking the Chief to issue a citation against anyone except against petitioners. (Wright indiv. Depo. at 110-12). The pages of Wright's deposition cited by the BIO and this Reply – pp. 109-12 – are set forth in full in the appendix hereto for verification. (Rep. App. 1-5).

- the fact that three criminal charges, not only one as implied by the BIO (at 7), were pressed against Charlene, the latter two being filed months after the initial charge and then months later still being dropped by the independent Cobb County prosecutor's office. As detailed in the Petition, the initial charge (operating Douglas' business without a license) has never been resolved while the later criminal charges (parking business vehicles on the premises of Douglas' home) necessarily were dropped, for the reason that Charlene did not own the property on which vehicles allegedly were parked, i.e., Douglas' home. *See* Entry of Nolle Prosequi, Aug. 14, 2000, State Court of Cobb County, Cobb Judicial Circuit (Glover, J.) ("Defendant is not the property owner."). None of the charges should ever have been filed against Charlene in all events, as she owns neither Douglas' home nor any of his business, as conceded by the BIO at 7, 9. But – it is of course Charlene who chose to rent her house to African Americans.

The BIO lacks any merit when it contends that "Petitioners have proven no nexus between Respondents' enforcement of the Home Occupation Ordinance at the 3891 house [Douglas' house] and the renting of the 3890 house [Charlene's house]." BIO at 8. The nexus is clear. Respondents directed the criminal charges specifically at Charlene, the owner of the 3890 house, and all of their punishment tactics were triggered by Charlene's renting of

the 3890 house to blacks, as detailed above and fully in the Petition (at 1-16).

## CONCLUSION

For the reasons stated above and in the Petition, this Court should grant the writ of certiorari, summarily reverse the Eleventh Circuit's judgment as to petitioners' § 1982 claim (and so much of their 42 U.S.C. § 1983 claim as is based on their § 1982 claim), and remand the case for further proceedings.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

| | | |
|---|---|---|
| EVA CHARLENE SARDONELL and DOUGLAS SARDONELL, | ) | |
| Plaintiffs | ) | CIVIL ACTION FILE |
| vs. | ) | NO. 1:99-CV-1921-JEC |
| GARY NORIEGA, Individually and as a Council Member, City of Powder Springs, WAYNE WRIGHT, Individually, and as City Manager, City of Powder Springs, RICHARD SAILORS, Individually, and as Mayor, City of Powder Springs, VINCE BLACKMON, Individually, and as Code Compliance Officer, and the CITY OF POWDER SPRINGS, | ) | |
| Defendants. | ) | |

* * *

The deposition of WAYNE WRIGHT, Individually, Deponent, taken on behalf of the Plaintiffs for purposes of examination and any other purposes authorized by the Federal Rules of Civil Procedure and Federal Rules of Evidence; all formalities are waived; the reading and signing of the deposition being reserved; taken before Anne C. Noble, CCR, commencing at 2:07 p.m. on March 7, 2000, at the Law Offices of Jacqueline K. Taylor, 1950

Spectrum Circle, 400 Corporate Spectrum Building, Atlanta, Georgia 30067.

* * *

[109]

Q. Did you request that Lieutenant Freeland issue the citation to the Sardonells?

A. No.

Q. Do you know who did?

A. I asked the chief of police to issue a citation.

Q. Okay.

A. To cause a citation to be issued.

Q. Who is the chief of police?

A. Rick Richardson.

Q. He was the chief at the time the citation was issued?

A. Yes.

Q. Did you send him something in writing?

A. No.

Q. You talked to him on the phone?

A. Yes.

Q. What did you tell him?

A. That the Sardonells are still in violation of the business license ordinance, although they said they would

move their business, and they needed to be cited, and that I wanted to have someone cite them.

Q. Have you ever done that before?

A. Yes.

Q. Request that the chief issue a citation?

[110]

A. Yes.

Q. In the course of a typical year, how many times do you do that, request that the chief of police issue a citation to a citizen; a typical year?

A. A couple times a year, maybe.

Q. How many times in 1999 do you think you did that; that is, that you requested that the chief of police issue or cause a citation to be issued to a citizen?

A. Well, I don't know how many times I actually contacted the chief.

Q. I'm not asking about contacting the chief. I'm asking about requesting that he have a citation issued.

A. I understand. But what I was trying to – I was trying to answer the – often I don't contact the chief. The way we handled code enforcement before Mr. Miller was hired, Mr. Blackmon would pursue enforcement until he got to the point, where if he could not obtain compliance, he would turn it over to the police department for a citation to be issued, and, from time to time, I have become involved in saying "Enough is enough," and "Let's issue a citation."

The directions may have come from me to Mr. Blackmon to the police department, or it may have

[111]

come from me to Mr. Elliott, who is Mr. Blackmon's supervisor, or it may have come from me, directly to the chief of police and then to an officer.

Q. All right.

A. So what I'm saying is: I may not have, every time a citation has been issued at my direction, gone through the chief of police.

Q. All right. Let's talk about your memory about when you did talk to the chief of police, you, yourself, directly, and requested that a citation be issued. I'm asking you: How many times do you recall that happened in 1999?

A. I think that's probably the only time.

Q. During the course of a typical year, how many times would you, yourself, normally contact the chief of police and request that a citation be issued to a citizen?

A. I can't recall that I've ever contacted the chief, other than that, to ask for a citation to be issued. I may have.

Q. You have no recollection today of having ever directly called the chief of police to ask that he have a citation issued to a citizen for a violation of a city ordinance; am I correct?

A. I may have, may not. I don't recall.

[112]

Q. I'm just asking you to answer the question.

Do you have any recollection that you have ever requested that the chief of police have a citation issued to a citizen for a violation of an ordinance?

A. I recall directing that citations be issued. Whether I called the chief, I don't remember.

Q. Sir –

MS. TAYLOR: I'm going to object. I'm going to, for the record, enter an objection that the witness is being nonresponsive.

BY MS. TAYLOR:

Q. The question is: Can you tell me that you have ever, other than with the Sardonells, requested directly – you, yourself – that the chief of police have a citation issued to a citizen for a violation of a city ordinance?

A. And I think I've clearly answered that question.

Q. Answer the question "yes" or "no," please, sir.

A. No.

Q. To your knowledge, has any code enforcement officer issued a citation to a citizen before for violations of a city ordinance? Has that

* * *